branches.[3] In both *Zadvydas* and *Martinez*, the Court rejected the government's submission that a court compelling the release into the community (under appropriate supervision) of aliens who had no right to enter or remain in the United States would exceed the judiciary's authority or violate the separation of powers. In both cases, the Court emphasized that such release from detention did not transgress the courts' proper role. The Court acknowledged that the practical result of such an order would be release into the community. But it emphasized that such release did not confer a legal right to "liv[e] at large" but merely a right to be "supervis[ed] under release conditions that may not be violated." *Zadvydas*, 533 U.S. at 696.

Martinez is particularly relevant because in that case the Court confronted the situation of aliens who had never been granted entry to the United States. The Court's holding demonstrates that parole is a judicially-enforceable remedy for the unlawful executive detention of aliens with no right to enter the United States. The aliens in that case were detained, were deemed to be outside the country and indisputably had no right to be admitted to the United States. 543 U.S. at 374-75. Those aliens were detained because, like the petitioners here, they could not be removed to their home country and no other country would take them. They nonetheless asserted a right to be released from incarceration on the ground that their continued detention was unlawful. 543 U.S. at 374-75, 376. The Court held that their continued incarceration was without statutory authorization and that they must be released into the community. *See id.* at 386-87.

The government vigorously argued in *Martinez*, as it has in this case, that judicially compelled release of those

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[3] As the government evidently concedes, petitioners' return to China is affirmatively prohibited because they are at risk of torture. Pet. for Cert. at 7.

individuals from detention would violate the separation of powers. In particular, the government asserted that granting habeas relief to aliens who had never been admitted would confer a judicially-ordered entry into our country over the objection of the political branches. The government specifically attempted to distinguish the Court's earlier decision in *Zadvydas* on the ground that it addressed only aliens who previously had been lawfully admitted and then lost their right to remain. *See Zadvydas*, 533 U.S. at 693. *See also* Brief for the Petitioners [United States] at 20, *Clark v. Martinez*, 543 U.S. 371 (2005) (No. 03-878), 2004 WL 1080689.

In contrast, the aliens in *Martinez*, the government argued, could not be released because they (like the petitioners here) had *never been admitted*. Brief for the Petitioners [United States] at 20, *Martinez* (No. 03-878), 2004 WL 1080689. The government insisted that a judicial order of release would pose grave separation-of-powers and national security concerns:

> That constitutional distinction [between aliens admitted by our government and those stopped at the border] rests not just on historical conceptions of the power of the national government to control immigration and the very limited rights of individuals arriving at the border, but also on practical separation-of-powers considerations in this sensitive area where foreign policy and national security intersect.
>
> * * *
>
> [W]hen the political Branches have stopped an alien at the border and have made the quintessentially political determination that he should not be admitted or released into the

> United States, a judicial order compelling his release into the Country would *cause* an entry that the political Branches have refused and, in the process, would directly countermand the specific and individualized entry decision made by those whom the Constitution has charged with protecting the borders and conducting foreign relations. It simply "is not within the province of the judiciary to order that foreigners who have never . . . even been admitted into the country" should "be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches."

Id. at 19-20 (citing cases) (emphasis added).[4]

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[4] *See also* Brief for the Petitioners [United States] at 16-17, *Martinez* (No 03-878), 2004 WL 1080689 (citations omitted):

> The singular authority of the political Branches over immigration derives from the "inherent and inalienable right of every sovereign and independent nation" to determine which aliens it will admit or expel. Indeed, the power "to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe," is not only "inherent in sovereignty," but also "essential to self-preservation." That power is vital "for maintaining normal international relations and defending the country against foreign encroachments and dangers." The power to exclude is a legislative and an "inherent executive" power. Accordingly, "[c]ourts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments

This Court necessarily rejected the government's reasoning when it held in *Martinez* that inadmissible aliens stopped at our border and denied entry must be released (subject to permissible conditions of supervision) if their detention becomes unlawful. *See* 543 U.S. at 378, 386-87.[5] The Court's decision ordering release from detention – and thus parole into the country over the government's vehement objection – compels rejection of the district court's erroneous conclusion that the Court's immigration jurisprudence prohibits granting meaningful judicial relief in this case.

The district court's other reason for rejecting immigration parole was the stated concern that doing so would have "national security and diplomatic implications" beyond its authority. In *Martinez* this Court also necessarily rejected that contention when it ordered petitioners' release over the identical objection that releasing inadmissible aliens "stopped at the border" would compromise our national security. *See* Brief for the Petitioners [United States] at 37-

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> largely immune from judicial control."
>
> * * *
>
> The political Branches' comprehensive control over immigration matters reaches its apex when dealing with aliens who are stopped at the border and are seeking admission to the United States[ ]

The government's brief in *Martinez* relied on the same cases that the district court cited below. *Compare* Pet. App. 10a (citing *Fong Yue Ting v United States, Knauff v. Shaughnessy* and *Fiallo v Bell*) *with* Brief for the Petitioners [United States] at 15-17, *Martinez* (No. 03-878), 2004 WL 1080689 (citing same).

[5] *Martinez* arose in the context of Mariel Cubans who had physically been paroled, but the holding governs *all* "inadmissible" aliens, including specifically aliens detained at the border who have never been physically present in the territory of the United States at all.

40, *Martinez* (No. 03-878), 2004 WL 1080689.[6] Indeed, in one notable respect, the release ordered under *Martinez* has broader implications than providing relief to these petitioners. The *Martinez* ruling applies to all inadmissible aliens, including all who unilaterally come to our shores without authorization and whose arrival is entirely outside the control of our government. In this case, by contrast, the petitioners include only those who were brought to our territory by the government, who have never sought to enter

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[6] The government vigorously argued that judicially-compelled release of inadmissible aliens would have dire constitutional, safety, security and diplomatic consequences:

> Moreover, adopting what would be, for all practical purposes, a time limit on the physical exclusion of aliens would have significant foreign policy and security implications for the United States – areas into which the judiciary should be loath to tread (if at all) without the clearest direction from Congress and the Executive Branch. Any diminution in the political Branches' comprehensive control over the borders, the admission of aliens, and the management of international migration crises would render the Nation more vulnerable to manipulation and infiltration by hostile powers and would tie the government's hands in responding to humanitarian emergencies.
>
> * * *
>
> It is difficult to understate the damage that could occur to the United States' international relations and national security if the government does not speak with one voice in the handling of migration crises at the border, or if foreign powers are told that the President and Congress cannot control the physical infiltration into the United States of criminals and other aliens stopped at the border.

Brief for the Petitioners [United States] at 39, 41, *Martinez* (No. 03-878), 2004 WL 1080689.

or to be admitted to the United States, and who are now seeking parole only under judicial and executive supervision. In short, a judicial order of release (with appropriate conditions) pursuant to a finding of unlawful detention would apply only to a limited number of cases and to far fewer aliens than those already governed by *Martinez* and the unknown number who will be covered in the future.[7]

Finally, review is warranted to correct the district court's seeming belief that bringing petitioners to the District of Columbia as a remedy for their unlawful detention would *ipso facto* compel their release into the community. Pet. App. 10a. In fact, the habeas remedy would address petitioners' *current* unlawful detention by the Executive and would not in itself preclude application of other relevant immigration or criminal statutes governing admission, detention and release. In this case, the conclusive Combatant Status Review Tribunal determination that petitioners are *not* enemy combatants would appear to establish that the concerns of dangerousness or terrorism that animated the district court's decision are absent. But even if that were not the case, a court providing relief in this habeas action would

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[7] In *Martinez*, the government estimated that more than 1,000 aliens would apparently gain release if the Court rejected the government's position and that a total of approximately 4,020 aliens were then in the pipeline to benefit from a favorable ruling. See Brief of Petitioner [United States] at 8 & n.5, *Martinez* (No. 03-878), 2004 WL 1080689. Court decisions implementing *Martinez* indicate that judicial release orders are proceeding unremarkably. *See, e.g., Morales-Fernandez v INS*, 418 F.3d 1116, 1124 (10th Cir. 2005) (holding that *Martinez* "dictates that Mr. Morales-Fernandez be released and paroled into the United States"); *Tran v Gonzales* 411 F. Supp. 2d 658, 660 (W.D. La. Jan. 22, 2006) (ordering petitioner's release from detention "under an order of supervision on conditions that the government believes are appropriate under the circumstances").

not thereby be abrogating other statutory authority the government might possess.[8]

2. *The Habeas Corpus Statute Authorizes the Judiciary to Provide Meaningful Relief for Unlawful Detention.*

The district court's failure to grant relief also contravenes the duty imposed by 28 U.S.C. § 2243, namely that the court "shall summarily hear and determine the facts, and dispose of the matter as law and justice require." The court expressly concluded that "justice requires" granting relief, but believed itself without legal authority to do so. Pet. App. 6a. Although the district court correctly looked to 28 U.S.C. § 2243 in determining the scope of relief appropriate here, the court misapprehended the statute's significance by construing it as a limit on its ability to fashion a remedy in the circumstances of this case. In fact, § 2243 provides a court with flexibility to fashion appropriate

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[8] Insofar as other statutes may authorize exclusion or even detention of inadmissible aliens and parolees, the government could presumably invoke them if they were applicable to these petitioners in the future. As the Court noted in *Martinez*, other provisions of law may authorize detention of an inadmissible alien and parolee "who presents a national security threat or has been involved in terrorist activities." 543 U.S. at 727 n.8 (quoting USA PATRIOT Act of 2001, § 412(a), 115 Stat. 350 (enacted Oct. 26, 2001) (codified at 8 U.S.C. § 1226a(a)(6))). Furthermore, any alien entitled to release under the immigration detention statute can be subjected to conditions of supervised release and to criminal penalties – including further detention – for failure to comply. *See id* at 387-88 (O'Connor, J., concurring). *See also Zadvydas*, 533 U.S. at 695 (in ordering release "[w]e nowhere deny the right of Congress to remove aliens, to subject them to supervision with conditions when released from detention, or to incarcerate them where appropriate for violations of those conditions"). In any case, it appears that the government has not articulated any such concerns here and that the petitioners requested a hearing before the district court to provide any necessary assurances in this regard.

relief under circumstances where it concludes that outright release may not be feasible or warranted. In this case, the court failed to take the measures necessary to achieve that purpose.

Section 2243 and its antecedents were enacted to give habeas courts greater flexibility to fashion appropriate remedies where immediate release was not appropriate or practicable – not to authorize denial of relief altogether. In construing a predecessor statute containing nearly identical language, this Court explained that the provision "invested [the courts] with the largest power to control and direct the form of judgment to be entered in cases brought up before it on habeas corpus." *In re Bonner*, 151 U.S. 242, 261 (1894). *See also Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (stating that under § 2243, "a court has broad discretion in conditioning a judgment granting habeas relief"); *Carafas v. LaVallee*, 391 U.S. 234, 239 (1968) (explaining that § 2243's "mandate is broad with respect to the relief that may be granted").

Accordingly, the Court has held that a habeas court may delay the release of a successful petitioner in order to provide the government with "an opportunity to correct the constitutional violation found by the court." *Hilton*, 481 U.S. at 775. In other words, if the error is of a kind that may be corrected without release, a court may allow the government an opportunity to correct the violation. *See, e.g.*, *Mahler v. Eby*, 264 U.S. 32, 46 (1924) (directing that petitioners not be released until the government had a reasonable time in which to correct the defect).

But that is plainly not the case here. The district found that release was warranted but declined to fashion any remedy. This is a case where the violation is not susceptible to correction, and release is therefore the norm. *See In re Bonner*, 151 U.S. at 262 (where "no correction can be made

of the judgment, . . . the prisoner must then be entirely discharged").

Section 2243 reflects a congressional directive that courts sitting in habeas make every effort to provide some appropriate remedy to those whose liberty is unlawfully restrained. The statute cannot be read to authorize a complete denial of relief to one who has been found to be detained unlawfully. Notably, the courts have deemed habeas competent to address claims that would result only in a small "quantum change in the level of custody." *Graham v. Broglin*, 922 F.2d 379, 381 (7th Cir. 1991) (Posner, J.) (discussing array of habeas relief as encompassing "outright freedom, or freedom subject to the limited reporting and financial constraints of bond or parole or probation, or the run of the prison in contrast to the approximation to solitary confinement that is disciplinary segregation"), *cited with approval in Wilkinson v. Dotson*, 544 U.S. 74, 125 S. Ct. 1242, 1250 (2005) (Scalia, J., concurring).

Under § 2243, once the district court found that the petitioners were being detained in violation of law, the court was obligated to fashion some appropriate remedy or, at a minimum, to direct the government to consider and propose alternatives to correct the violation within a reasonable time. Thus, even if the district court were justified in hesitating to impose a specific remedial course immediately, *certiorari* should be granted because the court erred in failing to take even the modest step of ordering conditional release and requiring the government to offer conceivable alternatives for implementing the court's directive.

3. *Denial of Relief for Unlawful Detention Eviscerates the Core Protection Guaranteed by the Writ of Habeas Corpus.*

Most fundamentally, review is warranted because the district court's decision eviscerates the most essential

protection of the Great Writ of Habeas Corpus, a judicial remedy for unlawful executive detention. Habeas corpus, enshrined in our Constitution from England, is the core protection against illegal detention by the Executive. The very purpose of the writ would be negated if the Executive engaging in unlawful detention were capable of imposing forms of incarceration that render the Judiciary powerless to grant relief from custody. That would have the effect of debilitating the Suspension Clause and would make the Executive, rather than the Judiciary, supreme in matters of detention.

This Court has repeatedly and recently emphasized that the writ's protections are at their greatest when the custody concerns *executive* detention. "[A]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *INS v. St. Cyr*, 533 U.S. 289, 301 (2001). *See also Swain v. Pressley*, 430 U.S. 372, 386 (1977) (Burger, C.J., concurring). *See generally Rasul v. Bush*, 542 U.S. 466, 474 (2004).

The English writ that the Framers inherited embodied protections against procedural devices deployed by the Executive to impede the efficacy of the writ. *See* Zechariah Chafee, Jr., *The Most Important Human Right in the Constitution*, 32 B.U. L. Rev. 144 (1952). In his renowned article, Professor Chafee recounts the evolution of the writ in England and its incorporation into our Constitution. Among the central safeguards enacted by the British Parliament in 1687, and already embodied into the writ at the time of the Constitution, were the protections against the Crown undermining the practical capacity of the Judiciary to enforce the writ. In particular, Chafee explains that *Jenckes' Case*, 6 How. St. Tr. 1189 (1676), led to a series of reforms intended by Parliament to overcome failures by the Judiciary

to effectuate the right to a habeas hearing and to order actual release. *See* 32 B.U. L. Rev. at 148-50.

Chafee details that among the tactics of the custodians at that time was "sending prisoners to the Channel Islands and to army garrisons" as a means of thwarting release. *See id.*, at 150. That and other practical problems caused Parliament to act. Chafee explains the Parliament's response: "These evils did not call for a new formulation of liberty of the person – that had been well done years before. . . . The real trouble was with the procedure available to vindicate that liberty. Yet it was not necessary to create entirely new machinery – the common-law writ of habeas corpus was good when it worked. What was needed was to tighten up and sharpen the machinery all down the line, and the Habeas Corpus Act did just that." *Id.* at 150. Thus, Chafee continues, Parliament enacted a restriction for "*every possible hitch* in the proceedings Parliament could foresee." *Id* at 152 (emphasis added). Included among these was a "list of places outside England to which English prisoners must not be sent." *Id.*

These reforms and many others were codified in our habeas corpus statute, now at 28 U.S.C. § 2241, and secured by the Suspension Clause. They underscore that an effective judicial remedy for unlawful detention is the cornerstone of habeas corpus. The district court's failure in this case to grant any relief for petitioners' detention after finding it unlawful is at odds with that history and purpose. *See Jones v. Cunningham*, 371 U.S. 236, 243 (1963) (noting that the writ "is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose – the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty"). *See also Fay v. Noia*, 372 U.S. 391, 401-02 (1963) (function of habeas writ has been "to provide a prompt and efficacious remedy for whatever society deems to be

intolerable restraints"); *Ex parte Milligan*, 71 U.S. 2, 116 (1866) (Davis, J.) ("[i]t was the manifest design of Congress to secure a certain remedy by which any one, deprived of liberty, could obtain it, if there was a judicial failure to find cause of offence against him").

This case presents a new version of the tactics that historically have been – and legally must be – rejected for the writ to serve as the central guarantor of human liberty and the rule of law. The government seized and transported the petitioners to Guantanamo, the government detained them pending an adjudication by the Combatant Status Review Tribunal, and the government now refuses to find any alternative to their present incarceration or to release them – because they are at Guantanamo. In other words, the Executive has created the very circumstances that it now insists preclude petitioners' release or any remedy whatsoever. At a bare minimum, the district court was obliged to do more than it did and to order some relief. If its failure to do so is permitted, the Executive will possess the ultimate trump in any similar habeas proceeding where the custodian can construct conditions of incarceration so restrictive or byzantine that they can later be invoked as constituting practical or legal impediments to a judicial remedy.

Today, as before, "habeas corpus cuts through all forms and goes to the very tissue of the structure. It comes in from the outside, not in subordination to the proceedings, and although every form may have been preserved, opens the inquiry whether they have been more than an empty shell." *Frank v. Mangum*, 237 U.S. 309, 346 (1915) (Holmes, J., dissenting). The value of the writ lies in commanding the government to provide a legal accounting in court and a remedy if the confinement is unlawful:

> [T]he glory of the English law consists in clearly defining the times, the causes, and the extent when, wherefore, and to what degree, the imprisonment of the subject may be lawful. This induces an absolute necessity of expressing upon every commitment the reason for which it is made; that the court upon an habeas corpus may examine into its validity; and according to the circumstances of the case may discharge, admit to bail, or remand the prisoner.

3 William Blackstone, *Commentaries on the Laws of England* * 133 (emphasis added). The district court erred by failing to comply with that mandate.

CONCLUSION

For the reasons set forth above, amicus respectfully submits that the petition for writ of *certiorari* before judgment should be granted.

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Petitioners,

v.

GEORGE W. BUSH, et al.,

Respondents.

On Petition For Writ Of Certiorari Before Judgment To The United States Court Of Appeals For The District Of Columbia Circuit

BRIEF *AMICI CURIAE* OF MORE THAN 300 DETAINEES INCARCERATED AT U.S. NAVAL STATION, GUANTÁNAMO BAY, CUBA IN SUPPORT OF PETITION

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INTERESTS OF *AMICI CURIAE*[1]

Amicus Murat Kurnaz is a Turkish national, *amici* Ahmed al Darby and Abdullah Ali Saleh Gerab Alsaaei are Saudi nationals, and *amici* Adham Mohammed Ali Awad and Zakaria Al-Baidany are Yemeni nationals who have been detained by the United States at the U.S. Naval Station, Guantánamo Bay, Cuba ("Guantánamo") for years without charge or trial.

The remaining *amici* are more than 300 detainees at Guantánamo who have filed petitions for writs of *habeas corpus* that are pending in the federal courts. *Amici*'s cases are listed in Appendix A.

Collectively, *amici* are gravely concerned that the district court's failure to order the remedy plainly contemplated by this Court in *Rasul* v. *Bush*, 542 U.S. 466 (2004), will perpetuate the system of lawlessness and brutality at Guantánamo that has already driven many *amici* to life-threatening despair.

SUMMARY OF THE ARGUMENT

Nearly two years ago, in *Rasul* v. *Bush*, 542 U.S. 466 (2004), this Court held that individuals imprisoned at Guantánamo could challenge their detention through *habeas corpus* in the federal courts. Petitioners' *habeas* petition is the only case of the over 300 *habeas* petitions filed following *Rasul* to reach a decision on the merits. After the Respondents conceded that Petitioners were "no longer enemy combatants," the district court held that Petitioners' continued detention at Guantánamo was

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[1] In accordance with Rule 37.6, this brief is not authored in whole or part by counsel for any party. No person or entity other than *amici* and their counsel made any monetary contribution to the preparation or submission of this brief. Petitioners and Respondents have consented to the filing of this brief. Copies of their letters of consent have been lodged with the Clerk.

unlawful. Nonetheless, the district court declared itself impotent to redress this violation of law.

The decision below drains *Rasul* of all meaning and ignores the statutory and constitutional duty of the judiciary to administer justice and check the Executive when acting illegally. Moreover, the district court disregards this Court's manifest concern about the continued detention of innocent men.

This Court's immediate intervention is required. The district court's decision traps *amici* in a system of enforced brutality, which draws no practical distinction between combatant and civilian, or innocent and guilty party. Within this system, the physical and mental health of many *amici* is rapidly deteriorating. The desperation of many *amici* – who now have been informed by a federal court that even those who are innocent and illegally imprisoned can be doomed to infinite confinement – and the imperative to lift the lingering confusion regarding this Court's decision in *Rasul*, which has produced unnecessary and harmful delay since its issuance, call for the Court to grant *certiorari* before judgment.

ARGUMENT

I. THE DECISION BELOW IS INCONSISTENT WITH *RASUL*.

In *Rasul*, this Court established that federal courts have authority "to determine the legality of the Executive's potentially indefinite detention of individuals who claim to be wholly innocent of wrongdoing," and issued a clear mandate to the federal courts "to consider in the first instance the merits of petitioners' claims" challenging their detention at Guantánamo. *Rasul*, 542 U.S. at 484. The lower courts are obligated to follow the mandates of this Court's rulings, especially when adjudicating *habeas* petitions. *See Hutto* v. *Davis*, 454 U.S. 370, 375 (1982); *Harris* v. *Nelson*, 394 U.S. 286, 292 (1969) ("There is no higher duty of a court, under our constitutional

system, than the careful processing and adjudication of petitioners for writs of *habeas corpus*.").

Yet the district court here only partially complied with the clear mandate of *Rasul*. While the district court recognized its authority to consider Petitioners' *habeas* claims and held that Petitioners' detention at Guantánamo is unlawful, it ultimately thwarted the adjudication of Petitioners' claims – in contravention of *Rasul* – by holding that it had no relief to offer Petitioners. The district court's decision renders this Court's opinion in *Rasul* void of any practical meaning.

A. *Rasul* Clearly Contemplated That The Federal Courts Would Order The Release Of Persons Unlawfully Detained At Guantánamo.

In *Rasul*, this Court confirmed the federal courts' authority to review the legality of Executive detention at Guantánamo pursuant to the federal *habeas* statute, 28 U.S.C. § 2241 *et seq.* By invoking "the historic purpose" of the common law writ of *habeas corpus*, this Court made clear that its decision that the federal courts have *habeas* jurisdiction means that they have the power to order the release of prisoners found to have been confined unlawfully by the Executive. *Rasul*, 542 U.S. at 474 (citing *Brown* v. *Allen*, 344 U.S. 443 (1953)).

It is inconceivable under the common law – and likewise under the *habeas* statute – for a *habeas* court to countenance a prolonged Executive detention it found unlawful. *See Ex parte Watkins*, 28 U.S. 193, 202 (1830) ("habeas corpus is a high prerogative writ, known to the common law, the great object of which is liberation of those who may be imprisoned without sufficient cause"); *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 136 (1807) (Marshall, C.J.) (concluding that "the crime with which the prisoners stand charged has not been committed," and thereby determining that the Court "can only direct them to be

discharged"); *Fay* v. *Noia*, 372 U.S. 391, 400 (1963) (*habeas corpus* affords a "swift and imperative remedy in all cases of illegal restraint or confinement"). Indeed, the protections of *habeas corpus* are "strongest" in the context of reviewing the legality of Executive detention, *Rasul*, 542 U.S. at 474 (citing *INS* v. *St. Cyr*, 533 U.S. 289, 301 (2001)), since such detention lacks the safeguards of an antecedent judicial trial. *See also id.* at 488 (Kennedy, J., concurring) (finding that indefinite detention suggests "much greater alignment with the traditional function of habeas corpus").

The district court's refusal to provide redress to Petitioners nullifies the authority granted by this Court to hear the merits of *habeas* petitions filed by detainees at Guantánamo. *See Weeks* v. *United States*, 232 U.S. 383, 393 (1914) (rights are "of no value" where there is no remedy available for violations thereof). The district court acknowledged that the only satisfactory remedy here would be Petitioners' release from Guantánamo, but it decided that it could not order that relief, or any other. Accordingly, Petitioners – and potentially *amici* – are placed in the same position as if this Court in *Rasul* had affirmed the lower courts' dismissal of such *habeas* petitions.

B. The Ruling Below Is Inconsistent With The Core Concept Of Judicial Review.

By failing to remedy Petitioners' unlawful detention, the district court abdicated its constitutional duty to administer justice and to check the unlawful acts of the Executive. *See United States* v. *Nixon*, 418 U.S. 683, 703-05 (1974). As this Court held at the same time it decided *Rasul*, "habeas corpus allows the Judicial Branch to play a necessary role in maintaining this delicate balance of governance, serving as an important judicial check on the Executive's discretion in the realm of detentions." *Hamdi* v. *Rumsfeld*, 542 U.S. 507, 536 (2004). This Court in *Rasul* specifically emphasized this judicial role, and rejected the Executive's claim of unilateral decision-making authority,